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## **JURISDICTIONAL STATEMENT**

This appeal is from a judgment rendered by the Honorable James R. Bickel, Circuit Judge of the Circuit Court of Dade County, Missouri, on a Motion for Relief from Judgment filed by Appellant, Craig Gresham. The Motion for Relief from Judgment arose out of a Judgment in an underlying juvenile case. An appeal of the Judgment Denying Motion for Relief from Judgment was originally heard and decided by the Missouri Court of Appeals, Southern District. This action was transferred to the Supreme Court by its own order dated June 30, 2006.

## **STATEMENT OF FACTS**

Appellant, Craig Gresham, is the natural father of Colten Gresham, born December 11, 2001. (L.F. 21). Respondent, Christine Webb, is the natural mother of Colten Gresham. (L.F. 21). Two days after the birth of Colten Gresham, Lisa Abbott, deputy juvenile officer, filed a petition concerning Colten Gresham in the Circuit Court of Dade County, Missouri, Juvenile Division. (L.F. 21). The petition stated that the child was in need of care and treatment because Christie Webb admitted to physically abusing Aaron Gresham, son of Craig Gresham, and that Craig Gresham failed to protect Aaron from the physical abuse. (L.F. 21).

Appellant, Craig Gresham, was not served with a copy of the petition nor did he receive a summons. (L.F. 1-13). On January 10, 2002, the Circuit Clerk of Dade County, Missouri sent Craig Gresham a notice of hearing that stated in its entirety as follows:

“January 10, 2002

Re: Colton James Gresham

Case Number 01JU672207

### NOTICE OF HEARING

A court hearing has been scheduled for the above case on February 4, 2002  
at 9:00 a.m.

Brenda Adams

Circuit Clerk”

(L.F. 22).

On February 4, 2002, a court appearance regarding the juvenile was held. (L.F. 1). Prior to February 4, 2002, Appellant did not file any pleadings. (L.F. 1). Appellant also did not appear in court on the day of the hearing. (L.F. 1). On February 21, 2002, the trial court entered a Finding of Jurisdiction and Order of Disposition in which it found that the allegations contained in the petition had been established. (L.F. 23).

Following the entry of the Finding of Jurisdiction and Order of Disposition, Appellant did participate in various other hearings in the juvenile case. (L.F.5-11). On April 1, 2005, a Motion for Relief From Judgment was filed on Appellant's behalf. (L.F. 24). Appellant's Motion for Relief From Judgment prayed that the Finding of Jurisdiction and Order of Disposition be set aside since he was never served with a Summons or a copy of the Petition filed in the Circuit Court of Dade County, Missouri, Juvenile Division prior to the hearing that was conducted on February 4, 2002. (L.F. 24). Appellant's Motion for Relief From Judgment was accompanied by written Suggestions. (L.F. 7). A hearing on Appellant's Motion for Relief From Judgment was held on April 11, 2005. (L.F. 12, 20). Prior to the hearing, all opposing parties waived personal service of the motion and assented to the matter being heard that day. (Tr. 4-7).

On May 6, 2005, the trial court entered an order denying the Appellant's motion finding that (1) Appellant was given notice of the hearing reasonably calculated to apprise him of the pendency of the action; and (2) that after February 4, 2002, Appellant appeared personally and participated in hearings and subpoenaed witnesses, and as such he was deemed to have waived any objection to notice or service. (L.F. 45). The order of May 6, 2005 was made a final judgment on November 14, 2005. (S.L.F. 1).

## **POINTS RELIED ON**

**I. The trial court erred in denying Appellant's Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since Appellant did not receive a Summons or a copy of the Petition as required by RSMo. § 211.101, Supreme Court Rule 115.01(c) and Supreme Court Rule 115.02.**

Supreme Court Rule 115.01(c).

Supreme Court Rule 115.02.

*In the Interest of D.L.D.*, 701 S.W.2d 152 (Mo. App. 1985).

*Worley v. Worley*, 19 S.W.3d 127 (Mo. App. 2000).

**II. The trial court erred in denying Appellant's Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since the actual notice of hearing received by Appellant was not reasonably calculated, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to present his objections.**

*In the Interest of D.J.W.*, 994 S.W.2d 60 (Mo. App. W.D. 1999).

*In the Interest of M.J.S.*, 724 S.W.2d 318 (Mo. App. W.D. 1987).

**III. The trial court erred in denying Appellant's Motion for Relief from Judgment based on waiver because the trial court abused its discretion in failing to**

**set aside the Finding of Jurisdiction and Order of Disposition in that juvenile cases present public policy reasons not to follow the general rule that jurisdictional questions are deemed waived if not raised at the earliest opportunity.**

*City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375, 378 (Mo. 1991).

*In the Interest of D.L.D.*, 701 S.W.2d 152 (Mo. App. 1985).

*In the Interest of K.A.W.*, 133 S.W.3d 1 (Mo. 2004).

*Troxel v. Granville*, 530 U.S. 57 (2000).

## **ARGUMENT**

**I. The trial court erred in denying Appellant's Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since Appellant did not receive a Summons or a copy of the Petition as required by RSMo. § 211.101, Supreme Court Rule 115.01(c) and Supreme Court Rule 115.02.**

### **Standard of Review-Point I**

A judgment based on Rule 74.06(b) is reviewed for an abuse of discretion. *Lambert v. Holbert*, 172 S.W.3d 894, 895 (Mo. App. 2005). A trial court abuses its discretion when its ruling is clearly against the logic of the circumstances before it and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *Lambert*, 172 S.W.3d at 895. In a case involving Rule 74.06(b), an appellate court has the power to review questions of law de novo. *Lambert*, 172 S.W.3d at 895.

### **Argument-Point I**

Missouri appellate courts have routinely held that compliance with due process is a fundamental requirement for the restriction of parental rights, and that in order for due process to be satisfied by the juvenile court, the first requirement is that the parent must be given sufficient notice that his rights are to be challenged in the courts. *In the Interest of D.J.W.*, 994 S.W.2d 60, 64 (Mo. App. W.D. 1999). The rights of a parent cannot be adjudicated by a juvenile court in the absence of notice to that party of the litigation. *In*

*the Interest of D.J.W.*, 994 S.W.2d at 64; *In the Interest of M.J.S.*, 724 S.W.2d 318, 319-20 (Mo. App. W.D. 1987). Furthermore, such notice will be sufficient if it is “reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In the Interest of D.J.W.*, 994 S.W.2d at 64 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Finally, in order for the “opportunity to present their objections” standard to be met, the notice must provide enough information so that “the one whose rights are challenged may know what is relied upon as a cause of action in order that he may be prepared at trial to meet the issues raised by the petition.” *In the Interest of M.J.S.*, 724 S.W.2d at 320.

Missouri Supreme Court Rule 115.01(c) states that once a petition challenging a person’s parental rights is filed, “Service of summons *shall* be made personally upon the parents of the juvenile . . .” (emphasis added). See also RSMo. § 211.101. Furthermore, Missouri Supreme Court Rule 115.02 governs the form and content of such summons. It states:

The summons shall state the date, time and place of the hearing. It shall be substantially in the form set forth in Rule 128.11. *A copy of the petition shall be served with the summons.* (emphasis added).

The effect of lack of service of a summons and a juvenile petition was discussed by the Western District in the case of *In the Interest of D.L.D.*, 701 S.W.2d 152 (Mo. App. 1985). In that termination of parental rights case, neither parent was served with a copy of the summons or the petition in the underlying juvenile case. *In the Interest of*

*D.L.D.*, 701 S.W.2d at 159. The Court of Appeals found that the failure to comply with the notice and hearing statutes in the underlying juvenile case was not a mere procedural technicality, and that the fact that the form of notice was provided for statutorily was evidence that the legislature “recognized the fundamental and abiding truth that reasonable notice to and an opportunity to be heard by those whose rights are affected by summary proceeds are a veritable cornerstone in our judicial system.” *In the Interest of D.L.D.*, 701 S.W.2d at 159.

The Court in *D.L.D.* discussed the different types of jurisdiction in a juvenile case. It first noted that even though there had been no service, the juvenile court had jurisdiction over the child to act and the power to order the juvenile officer to take the child into custody at once. *In the Interest of D.L.D.*, 701 S.W.2d at 159. However, the Court further noted that the jurisdiction to issue such an ex-parte order “did not alleviate the court’s further duty to issue a summons and conduct a hearing on the parent’s custody rights under the statutes and according to notions of due process and fair play.” *In the Interest of D.L.D.*, 701 S.W.2d at 159. The Court ultimately found that the lack of notice in the form required by statute amounted to a denial of due process, and that consequently the juvenile court had no jurisdiction to divest the parents of legal custody in the underlying juvenile case. *In the Interest of D.L.D.*, 701 S.W.2d at 160.

Appellant, Craig Gresham, was denied due process in respect to the hearing of February 4, 2002. Like the parents in *D.L.D.*, Appellant was never provided, in accordance with Rule 115.01(c) and Rule 115.02, a copy of the summons and petition that outlined the complaints against him. The only notice that he received was a notice

stating that there was going to be a hearing on February 4, 2002, and that the hearing was “regarding” his son, Colten Gresham. (L.F. 1, 22). Nothing in the notice would have informed a lay person that the hearing was about a juvenile case. Appellant was never properly notified that his parental rights were being attacked. Appellant was also not properly notified that the juvenile officer contended and was preparing to present evidence to the juvenile court that the Appellant was guilty of conduct that required the child to be placed in care.

Despite a lack of notice, a hearing was held without the Appellant’s presence, and a judicial finding was entered that Appellant failed to protect his children from physical abuse. (L.F. 1, 15, 23). In short, the Appellant was never afforded an opportunity to adequately present his objections to the juvenile petition because he never received a copy of the summons and the juvenile petition that was supposed to advise him that the juvenile officer was making claims about him against which he needed to object. One cannot object to something of which one has absolutely no knowledge. As did the Court of Appeals in *D.L.D.*, this Court should hold that the failure to serve Appellant with a summons and petition is a failure to meet the standards of due process and that the Finding of Jurisdiction and Order of Disposition is void due to lack of jurisdiction.

Appellant does recognize the existence of two other Court of Appeals decisions that are somewhat factually similar to the present case before this Court which nonetheless, come to different conclusions on the existence and establishment of due process in the absence of service of a summons and petition.

First, in the case of *In the Interest of T.N.H.*, 70 S.W.3d 2 (Mo. App. 2002), the Eastern District held that the parents of a child who were not served with notice pursuant to Rule 115.01(c) and Rule 115.02 were not deprived of due process by not receiving such notice because, at the time of the hearing in that case, the father's whereabouts were unknown and the mother's address was unknown. *In the Interest of T.N.H.*, 70 S.W.3d at 8. The Court in that case noted that to delay the juvenile hearing until the child's parents could be found would clearly frustrate the State's policy of serving the best interests of the child. *In the Interest of T.N.H.*, 70 S.W.3d at 8.

Second, in the case of *In the Interest of M.R.F.*, 907 S.W.2d 787 (Mo. App. 1995), the Court of Appeals held that the failure to serve a summons on the parent pursuant to Rule 115.01(c) and Rule 115.02 did not deprive such parent of due process because the parent in that case did in fact attend the hearing in question despite the lack of such statutory notice. *In the Interest of M.R.F.*, 907 S.W.2d at 793. This Court found that the lack of statutory notice was effectively waived because of the parent's participation in the *same* hearing of which the parent claimed she was not given notice. *In the Interest of M.R.F.*, 907 S.W.2d at 793.

Both *M.R.F.* and *T.N.H.* are distinguishable from the present dispute in this case. First, unlike the circumstances in *T.N.H.*, the whereabouts of Appellant Craig Gresham were obviously known as there was delivery of a notice of the hearing at issue. Therefore, the reasoning excusing service of a summons and petition in *T.N.H.* is inapplicable to the circumstances now before this Court. Second, unlike the circumstances in *M.R.F.*, the Appellant in this case *did not* attend the hearing of which he was deficiently notified.

(L.F. 1, 15). Thus, the Court's reasoning in *M.R.F.* regarding waiver by attendance at the hearing is inapplicable to the circumstances now before this Court.

In civil cases, the effect of a failure to serve a summons and petition is well-established. The Court of Appeals in *Worley v. Worley*, 19 S.W.3d 127 (Mo. App. 2000) discussed principles of jurisdiction arising from lack of proper service of process. The *Worley* case involved service on an ex-spouse in a motion to modify. In that case, the ex-spouse alleged that service upon her was invalid because the person who served her with a copy of the summons and petition was not a sheriff, deputy sheriff, coroner or a specially appointed special process server. The Court of Appeals held that the service of process on the ex-spouse was inadequate for that reason and that the trial court erred in failing to reverse the default judgment against her.

In so holding, the Court of Appeals stated that a court could only obtain jurisdiction to adjudicate rights by service of process authorized by statute or rule (or by appearance). *Worley*, 19 S.W.3d at 129. It further noted that a parties' actual notice was insufficient. *Worley*, 19 S.W.3d at 129. Finally, the Court of Appeals, citing this Court in *Acapolon Corp. v. Ralston Purina Co.*, 827 S.W.2d 189, 196 (Mo. banc 1992), stated that, "Satisfying minimum standards of due process ... does not obviate the necessity for service process in the manner prescribed in our statutes and rules." *Worley*, 19 S.W.3d at 129.

In both this case and the *Worley* case there was some actual notice of the court proceeding on the part of the defending party. However, the actual notice that Appellant received was far less than the ex-spouse received in the *Worley* case. The ex-spouse in

*Worley* actually received a copy of the summons and petition, albeit by one not authorized to serve it. Appellant received no summons and petition at all. He only received a copy of a letter advising him of a court date. The letter did not advise Appellant of any of the charges brought against him. If actual notice of the summons and petition in the *Worley* case was insufficient for that court to obtain jurisdiction, then actual notice of something far less than a summons and petition in this case should also be held as insufficient in this case.

In asserting that the underlying judgment is void because of Appellant's failure to receive a summons and petition as required by statute and court rule, Appellant is not unmindful of this Court's decision of *In re P.L.O.*, 131 S.W.3d 782 (Mo. banc 2004). In that case, this Court stated that the failure to follow certain statutes and regulations relating to juvenile cases did not deprive a court of jurisdiction despite the mandatory language used in those statutes and regulations. However, the facts of the *P.L.O.* case are distinguishable from Appellant's case. The *P.L.O.* case did not involve service of process. It involved the statutory and regulatory requirements and timeliness for service plans, child statutes reports and dispositional or review hearings. The failure to comply with the statutory and regulatory requirements involved in *P.L.O.* does not rise to the same level of fundamental importance as the failure to comply with statutes and court rules concerning proper service of process. Therefore, *P.L.O.* can be distinguished upon that basis.

The effect of the failure to serve Appellant with a summons and petition in this case should have the same effect as the failure to do so in *Worley*. Courts should be even

more concerned about jurisdictional requirement in juvenile cases than in other civil cases because juvenile cases affect the fundamental relationship between parent and child. This Court should find that Appellant was deprived of due process by the failure to serve him with the summons and petition. This Court should further find that, as a result of the lack of due process, the juvenile court did not have jurisdiction to enter the original Finding of Jurisdiction and Order of Disposition and, therefore, the trial court abused its discretion by failing to set aside a clearly void judgment.

**II. The trial court erred in denying Appellant's Motion for Relief from Judgment because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that the trial court lacked jurisdiction to enter the underlying Finding of Jurisdiction and Order of Disposition since the actual notice of hearing received by Appellant was not reasonably calculated, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to present his objections.**

Standard of Review-Point II

A judgment based on Rule 74.06(b) is reviewed for an abuse of discretion. *Lambert*, 172 S.W.3d at 895. A trial court abuses its discretion when its ruling is clearly against the logic of the circumstances before it and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *Lambert*, 172 S.W.3d at 895. In a case involving Rule 74.06(b), an appellate court has the power to review questions of law de novo. *Lambert*, 172 S.W.3d at 895.

## Argument-Point II

Even if this Court should ultimately determine that the failure to provide the Appellant with a summons and petition as provided by RSMO. § 211.101., Rule 115.01(c) and Rule 115.02 does not rise to a procedural deficiency so as to deprive the Appellant of due process, the Appellant further contends that the notice which was actually placed in his hands was nonetheless insufficient to meet the standards of due process.

As was noted in the argument pertaining to Point I, the rights of a parent cannot be adjudicated by a juvenile court in the absence of notice to that party of the litigation. *In the Interest of D.J.W.*, 994 S.W.2d at 64. Furthermore, such notice will be sufficient if it is “reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In the Interest of D.J.W.*, 994 S.W.2d at 64.

An examination of the notice of the February 4, 2002 hearing provided to the Appellant reveals that Craig Gresham was notified only that a hearing of some sort was to take place on February 4<sup>th</sup> and that the hearing was to be held in regards to Colten James Gresham. (L.F. 1, 22). The notice contains no reference to the type of hearing to be held nor does it describe the type of case as juvenile. (L.F. 22).

The notice did not provide enough information so that Appellant could know about the pendency of the action against him. The notice is completely devoid of any reference that would give Appellant knowledge that a restriction on his parental rights was being sought. There is no reference in the notice of any of the complaints brought

forth in the petition filed by the juvenile office. Furthermore, the notice did not provide enough information to allow Appellant to be prepared at trial to meet the issues raised by the petition. Without knowing what type of case was being brought against him, Appellant could not adequately prepare his case or subpoena witnesses to support his case. Thus, Appellant did not receive any notice reasonably calculated, under all the circumstances, to apprise him of the pendency of the action and afford him an opportunity to present his objections.

In the case of *In the Interest of M.J.S.*, the father was served with a summons and petition. However, the petition did not mention that the *father's* parental rights were being challenged. The Court of Appeals held that the petition lodged against the mother was not adequate in providing the father with due process because it afforded him no notice that *his* parental rights might be restricted by the juvenile court. *In the Interest of M.J.S.*, 724 S.W.2d at 320. If it is possible for an actual petition to be insufficient from a due process standpoint in failing to provide a father with notice that *his* parental rights might be restricted, then surely the generic notice received by Appellant, which does not make *any* mention of charges or possible parental rights restrictions, is also insufficient in meeting due process standards.

As a result of the deficiencies in the notice delivered to him on January 10, 2002, Appellant did not receive due process. The effect of this failure of due process was that the juvenile court did not have jurisdiction to make the findings contained in the underlying Finding of Jurisdiction and Order of Disposition. Therefore, since the

underlying Finding of Jurisdiction and Order of Disposition was void, it was an abuse of discretion for the trial court to refuse to set it aside.

**III. The trial court erred in denying Appellant's Motion for Relief from Judgment based on waiver because the trial court abused its discretion in failing to set aside the Finding of Jurisdiction and Order of Disposition in that juvenile cases present public policy reasons not to follow the general rule that jurisdictional questions are deemed waived if not raised at the earliest opportunity.**

#### Standard of Review-Point III

A judgment based on Rule 74.06(b) is reviewed for an abuse of discretion. *Lambert*, 172 S.W.3d at 895. A trial court abuses its discretion when its ruling is clearly against the logic of the circumstances before it and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration. *Lambert*, 172 S.W.3d at 895. In a case involving Rule 74.06(b), an appellate court has the power to review questions of law de novo. *Lambert*, 172 S.W.3d at 895.

#### Argument-Point III

The trial court held that Appellant waived any defect that arose from Appellant's failure to be served with a summons and petition because he appeared and presented evidence in subsequent juvenile proceedings. There is authority to support the trial court's ruling.

In *State v. Weinstein*, 411 S.W.2d 267 (Mo. App. 1967), the father in a juvenile case filed a motion to dismiss a juvenile petition prior to the entry of judgment. Before filing the motion to dismiss, the father's attorney filed an entry of appearance and a

request for an order to permit him to examine certain legal and social files of the juvenile court. The Eastern District Court of Appeals held that once a party does any act which recognizes the case as pending in court and seeks relief at the hands of the court he has made a general appearance and can no longer question jurisdiction. *Weinstein*, 411 S.W.2d at 273-274. The Court found that the father, by making a request to examine the legal and social files, had made a general appearance and could no longer question jurisdiction. *Weinstein*, 411 S.W.2d at 273-274.

In *T.N.H.*, mother was not served with a summons and petition because her whereabouts at the time the petition was filed were unknown. Mother later appeared in a hearing without questioning the court's jurisdiction over her person. Her attorneys also entered their appearances on her behalf, received permission to inspect the legal/social files, and subpoenaed and filed notices to take depositions. The Eastern District Court of Appeals once again held that such appearance without questioning the court's jurisdiction over her person cured any failure of due process. *In the Interest of T.N.H.*, 70 S.W.3d 8-9.

The *Weinstein* and *T.N.H.* cases should be contrasted to the result in the *D.L.D.* case. In *D.L.D.*, the juvenile officer filed a custody petition on April 10, 1981. On that same date, the judge issued an order placing the child in the custody of the Division of Family Services. No petition or summons was ever issued or served on the father. A mere 10 days after the petition was filed, the father filed a motion for return of custody of the child. Based on the reasoning found in *Weinstein* and *T.N.H.*, the Western District Court of Appeals should have held that the father in *D.L.D.* made a general appearance and a request for affirmative relief by filing his motion for return of the child. This

general appearance should have precluded the father from ever raising the issue of improper service before any court. This was not the result reached. Instead, the Western District Court of Appeals determined that the lack of proper service in *D.L.D.* required that the case be remanded to the juvenile court so that a proper adjudication of legal custody could be determined. *In the Interest of D.L.D.*, 701 S.W.2d at 162.

A parent has a natural right to the custody of his minor child which public policy demands shall be held inviolate. See *In the Matter of B.S.P.*, 411 S.W.2d 834 (Mo. App. 1967). The relationship between parent and child is a fundamental societal relationship. *In the Interest of K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004). This fundamental relationship is protected by the constitutional guarantee of due process. *In the Interest of K.A.W.*, 133 S.W.3d at 12. The parent-child relationship is one of the oldest fundamental liberty interests recognized by the United States Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). This liberty interest does not evaporate simply because a child's parents are not model parents. *In the Interest of K.A.W.*, 133 S.W.3d at 12.

Because of public policy reasons this Court should follow the approach in *D.L.D.* rather than the approach of *Weinstein* and *T.N.H.* If this Court fails to do so, then the ultimate result is that a relationship between parent and child can be adversely affected or even terminated based upon a procedural error of a parent rather than actual wrongs committed by a parent. Once a child comes under the jurisdiction of the juvenile court, the reason that the child came into care can be used as a basis for a petition for termination of parental rights. See RSMo. § 211.447.4 (3). If a parent has a valid constitutional defense to the underlying juvenile petition and fails to raise it at the earliest

opportunity as required by *Weinstein* and *T.N.H.*, a parent will not later be able to raise that defense because he will have been deemed to have waived it. The end result is that a parent can be held guilty of wrong doing, without notice or an opportunity to be heard, and that finding of guilt can be used to terminate his parental rights---all because the parent made the procedural error of not raising the constitutional claim at the earliest opportunity.

In *City of Chesterfield v. Director of Revenue*, 811 S.W.2d 375, 378 (Mo. 1991), this Court held that there can be a public interest exception to the general rule that constitutional questions are deemed waived when not raised at the first opportunity. This Court should find such a public interest exception in juvenile cases. There is a very clear and discernible public interest in the relationship between parents and children as enunciated by this Court in *K.A.W.* and by the United States Supreme Court in *Troxel*. Because of the importance of the parent-child relationship, the public interest exception should be expanded to apply in juvenile cases. A simple procedural error can have a terrible consequence for a child. It can result in a civil death—the termination of the relationship between parent and child. Surely, public policy demands that a parent's right to a child be determined on the merits of a parent's actions affecting a child and not upon procedural deficiencies.

This Court should find that public policy does demand that before the parent-child relationship can be affected a parent should have the right to notice and an opportunity to be heard and that a deemed waiver of those rights is not applicable in a juvenile case.

Therefore, this Court should decline to follow *Weinstein* and *T.N.H.* This Court should instead follow *D.L.D.* and remand this case for a proper adjudication of legal custody.

## **CONCLUSION**

For the above-stated reasons, Appellant, Craig Gresham, respectfully submits to this Court that: (i) because the facts show that he was deprived of due process by failure to serve him with a copy of the summons and juvenile petition; (ii) because the facts demonstrate that even the notice that was furnished to Appellant failed to provide him with notice reasonably calculated, under all the circumstances, to apprise him of the pendency of the juvenile action and to afford him an opportunity to present his objections; and (iii) because the facts show that Appellant did not waive his rights to proper notice and due process; the trial court erred in denying the Appellant relief from the February 21, 2002 Finding of Jurisdiction and Order of Disposition in that the same was void for lack of jurisdiction.

Accordingly, the Appellant respectfully requests that:

1. This Court determine that Appellant was denied his right to due process when he did not receive a copy of the summons and juvenile petition containing the allegations raised against him before the hearing of February 4, 2002 as required by statute and corresponding Supreme Court Rules;
2. This Court determine that Craig Gresham was denied his right to due process in receiving a generic notification of the hearing of February 4, 2002 that did not make reference to the allegations against him nor inform him that his parental rights might be restricted in the hearing;

3. This Court determine that Craig Gresham did not waive his right to object to the Finding of Jurisdiction and Order of Disposition by his subsequent appearances before the trial court; and
4. That this Court reverse the finding of the trial court and determine that Appellant was entitled to relief from the Finding of Jurisdiction and Order of Disposition of February 21, 2002 because it was void for lack of jurisdiction.

Respectfully submitted,

**DOUGLAS, HAUN & HEIDEMANN, P.C.**  
111 West Broadway, P.O. Box 117  
Bolivar, Missouri 65613  
Telephone: (417) 326-5261  
Fax: (417) 326-2845  
vhaun@bolivarlaw.com

By: \_\_\_\_\_  
**Verna L. Haun**  
Missouri Bar No. 32188  
Attorney for Appellant Craig Gresham

**CERTIFICATE OF COMPLIANCE**

**COMES NOW** Verna L. Haun of Douglas, Haun & Heidemann, P.C. counsel for Appellant, Craig Gresham, and states that Appellant's Brief filed this day with the Supreme Court:

1. Includes the information required by Rule 55.03,
2. Complies with the limitations contained in Rule 84.06(b); and
3. Contains 5,796 words.
4. That the floppy disk submitted to the Court is virus-free.

**DOUGLAS, HAUN & HEIDEMANN, P.C.**  
111 West Broadway, P.O. Box 117  
Bolivar, Missouri 65613  
Telephone: (417) 326-5261  
Fax: (417) 326-2845  
vhaun@bolivarlaw.com

By: \_\_\_\_\_  
**Verna L. Haun**  
Missouri Bar No. 32188  
Attorney for Appellant Craig Gresham

## **CERTIFICATE OF SERVICE**

The undersigned certifies that a complete copy of Appellant's Brief and one copy of Appellant' Brief on disk was served upon:

Susan Appelquist  
Attorney-at-Law  
111 E. Dallas St.  
Mount Vernon, MO 65712  
Telephone (417) 466-3343  
Fax (417) 466-4766

Belinda S. Elliston  
Attorney-at-Law  
114 W. 10th St.  
Lamar, MO 64759  
Telephone (417) 682-6061  
Fax (417) 682-6063

John Wagner  
Department of Social Services  
Division of Legal Services  
149 Park Central Square, Room 925  
Springfield MO 65806  
Telephone (417) 895-6538  
Fax (417) 895-6309

Jeannie Longstreth  
Vernon County Courthouse  
100 W. Cherry St.  
Nevada MO 64772  
Telephone (417) 448-2520  
Fax (417) 667-3857

Charles G. Ankrom  
Attorney at Law  
119 S. Main  
Bolivar MO 65613  
Telephone (417) 326-8756  
Fax (417) 777-4013

Jim Spahr  
12317 Highway D  
Versailles MO 65084-4111  
Telephone (573) 378-6595  
Fax NONE

Frankie Spahr  
12317 Highway D  
Versailles, MO 65084-4111  
Telephone (573) 378-6595  
Fax NONE

Gary Gardner  
207 W High St  
PO Box 899  
Jefferson City MO 65102-0899  
Telephone (573) 751-3321  
Fax (573) 751-9456

Vickers Law Firm  
Brandon Fisher  
P.O. Box 429  
Nevada, MO 64772  
Telephone (417) 895-6538  
Fax (417) 895-6309

by enclosing the same in envelopes addressed to each of the above-mentioned parties at their addresses as disclosed in the pleadings of record herein and shown above, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Bolivar, Missouri on August 7, 2006.

**Douglas, Haun & Heidemann, P.C.**  
111 West Broadway, P.O. Box 117  
Bolivar, Missouri 65613  
Telephone: (417) 326-5261  
Fax: (417) 326-2845

By \_\_\_\_\_  
**Verna L. Haun**  
Missouri Bar No. 32188

## **APPENDIX**

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Supreme Court Rule 74.06 .....	A4
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